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## A BILL FOR AN ORDINANCE

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TO AMEND CHAPTERS 23 AND 25, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, RELATING TO SHORELINE SETBACKS AND THE SPECIAL MANAGEMENT AREA.

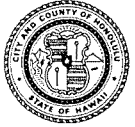
BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and intent. The purpose of this ordinance is to make miscellaneous amendments to the Shoreline Setback and Special Management Area Ordinances.

SECTION 2. Section 23-1.5, Revised Ordinances of Honolulu 1990, as amended ("Prohibitions within the shoreline area"), is amended by amending subsection (b) to read as follows:

"(b) Structures and activities are prohibited within the shoreline area, with the following exceptions:

- (1) Minor structures and activities permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access, public views or open space along the shoreline. If, due to beach erosion or other cause, the director determines that a minor structure permitted under this section may affect beach processes or public access or has become located seaward of the shoreline, the director or other governmental agency having jurisdiction may order its removal;
- (2) Minor structures and activities necessary for or ancillary to continuation, but not expansion, of agriculture or aquaculture in the shoreline area on June 16, 1989;
- (3) Maintenance, repair, reconstruction, and minor additions to or alterations of legal, publicly owned boating, maritime, or ocean sports recreational facilities, which result in little or no interference with natural shoreline processes. Privately owned boating, maritime, or ocean sports recreational facilities are specifically excluded from this exception;
- (4) Nonconforming structures or structures that have received a shoreline setback variance[.];
- (5) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens."



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SECTION 3. Section 23-1.7, Revised Ordinances of Honolulu 1990, as amended ("Subdivision"), is amended to read as follows:

**"Sec. 23-1.7 Subdivision[.] actions.**

(a) Except as provided in this chapter, no new subdivision [of] action, including the subdivision or consolidation of land, for an existing shoreline lot to create new lots may be approved unless each new lot:

(1) Can accommodate a 60-foot shoreline setback, except for:

(A) [areas which] Areas that are not within the coastal high hazard district and where the entire shoreline for the new lot is characterized by either:

(i) an authorized shoreline protection structure; or

(ii) a fixed, rocky shoreline[.];

in which case the department may approve new [subdivisions which] shoreline lots that will accommodate a 40-foot shoreline setback; or

(B) Minor subdivision actions involving the subdivision or consolidation of land only for the purpose of creating easements or adjusting lot lines, and which will not result in any increase in the number of permitted dwelling units, nonresidential structures, or lots;

and,

(2) Has a buildable area adequate to accommodate the proposed development, including appurtenant uses and structures, such as parking.

Accreted lands obtained from the State of Hawaii pursuant to HRS Section 501-33 shall not be included as part of the land area when making calculations of the lot size available for subdivision.

(b) Subdivision of existing shoreline lots for the purpose of widening roadways designated on the [development plan public facilities maps] public infrastructure maps adopted pursuant to Chapter 4, Article 8, may be permitted, upon review and approval of the director.



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- (c) New residential lots may not be approved unless each new lot:
  - (1) Has a buildable area of at least 3,000 square feet; and
  - (2) Has a buildable area with a minimum depth and width of at least 50 feet.”

SECTION 4. Section 23-1.8, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

**“Sec. 23-1.8 Criteria for granting a variance.**

- (a) The director, as provided in Section 23-1.10, may grant a variance upon finding that, based upon the record presented, the proposed structure or activity is necessary for or ancillary to:
  - (1) Cultivation of crops;
  - (2) Aquaculture;
  - (3) Landscaping; provided that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
  - (4) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the director also finds that the moving of sand will not adversely affect beach processes, will not diminish the size of a public beach and will be necessary to stabilize an eroding shoreline.
- (b) The director may also grant a variance upon finding that, based upon the record presented, the proposed structure or activity meets one of the following standards of this section.
  - (1) Shoreline-dependent Facility Standard. A variance may be granted for an activity or structure that is necessary for or ancillary to a shoreline-dependent facility or improvement, including drainage facilities and boating, maritime or ocean sports recreational facilities; provided that the proposal is the practicable alternative which best conforms to the purpose of the shoreline setback rules.
  - (2) Public Interest Standard. A variance may be granted for an activity or structure [which is undertaken] that is necessary for or ancillary to facilities



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or improvements by a public agency or by a public utility regulated under HRS Chapter 269, or [a private facility or improvement which is undertaken by a private entity and is] necessary for or ancillary to private facilities or improvements that are clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of this chapter and the shoreline setback rules.

Public interest shall mean principally of benefit to the general public, as determined by the director.

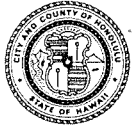
(3) Hardship Standard.

(A) [A structure or activity may be granted a variance upon grounds of hardship if:] A variance may be granted for an activity or structure that is necessary or ancillary to the following private facilities or improvements, if hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area:

- (i) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; and
- (ii) Private facilities or improvements that may artificially fix the shoreline, but only if hardship is likely to be caused by shoreline erosion and conditions are imposed prohibiting any such structure seaward of the existing shoreline unless it is clearly in the public interest.

(B) For the purposes of this subsection, hardship may be found only if:

- (i) The applicant would be deprived of reasonable use of the land if required to comply fully with the shoreline setback ordinance and the shoreline setback rules;
- (ii) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of this chapter and the shoreline setback rules; and
- (iii) The proposal is the practicable alternative which best conforms to the purpose of this chapter and the shoreline setback rules.



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- [(B)] (C) Before granting a hardship variance, the director must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.
- [(C)] If the activity or structure may artificially fix the shoreline, a variance may be granted only if hardship is likely to be caused by shoreline erosion; provided that conditions are imposed prohibiting any such structure seaward of the existing shoreline unless it is clearly in the public interest.]
- (D) Hardship shall not be determined as a result of a zone change, plan review use approval, subdivision approval, cluster housing approval, planned development housing approval, conditional use permit, or any other discretionary land use permit granted after June 16, 1989."

SECTION 5. Section 25-1.3, Revised Ordinances of Honolulu 1990, as amended ("Definitions"), is amended by amending the definition of "Development" to read as follows:

"Development" means any of the uses, activities or operations on land; in or under water, within the special management area that are included below, but not those uses, activities, or operations excluded in paragraph (2).

- (1) "Development" includes but is not limited to the following:
- (A) The placement or erection of any solid material or any gaseous, liquid, solid or thermal waste;
  - (B) Grading, removing, dredging, mining or extraction of any materials;
  - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
  - (D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and

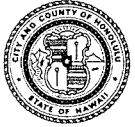


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- (E) Construction, reconstruction, demolition or alteration of the size of any structure.
- (2) "Development" does not include the following:
  - (A) Construction of a single-family residence that is not part of a larger development;
  - (B) Repair or maintenance of roads and highways within existing rights-of-way;
  - (C) Routine maintenance dredging of existing streams, channels and drainageways;
  - (D) The repair and maintenance of underground utility lines, including but not limited to water, sewer, power and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
  - (E) Zoning variances, except for height, density, parking and shoreline setback;
  - (F) Repair, maintenance or interior alterations to existing structures;
  - (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
  - (H) The use of any land for the purpose of cultivating, planting, growing and harvesting of plants, crops, trees and other agricultural, horticultural or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes subject to review by the authority in accordance with paragraph (3);
  - (I) The transfer of title to land;
  - (J) The creation or termination of easements, covenants or other rights in structures or land;
  - (K) The subdivision of land into lots greater than 20 acres in size;
  - (L) The subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided, that any



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such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

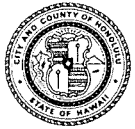
- (M) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
  - (N) Structural and nonstructural improvements to existing single-family residences including additional dwelling units, where otherwise permissible; [and]
  - (O) Nonstructural improvements to existing commercial structures[.];  
and
  - (P) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.
- (3) Cumulative impact. Whenever the authority finds that any use, activity<sub>1</sub> or operation excluded in paragraph (2) is or may become part of a larger project, the cumulative impact of which may have a significant environmental or ecological effect on the special management area, that use, activity<sub>1</sub> or operation shall be defined as “development” for the purpose of this chapter.
- (4) Significant effect. Whenever the authority finds that a use, activity<sub>1</sub> or operation excluded in paragraph (2) may have a significant environmental or ecological effect on the special management area or special wetlands areas, that use, activity, or operation shall be defined as “development” for the purposes of this chapter.”

SECTION 6. Section 25-1.3, Revised Ordinances of Honolulu 1990, as amended (“Definitions”), is amended by adding a new definition of “Shoreline lot” to read as follows:

““Shoreline lot” means a shoreline lot as defined in ROH Chapter 23.”

SECTION 7. Section 25-3.3, Revised Ordinances of Honolulu 1990, as amended (“Procedural guidelines”), is amended by amending subsection (b) to read as follows:

- “(b) Consultation. Any applicant contemplating development within the special management area [shall] is encouraged to contact the agency for information



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regarding procedures and general information which may have a direct influence on the applicant's proposed development."

SECTION 8. Section 25-3.3, Revised Ordinances of Honolulu 1990, as amended ("Procedural guidelines"), is amended by amending subsection (e) to read as follows:

"(e) Determination.

- (1) [The] For the purposes of this chapter, other than special requirements for shoreline lots as provided in Section 25-6.3, the director shall declare a development proposal exempt where the director finds that the proposal is not defined as development under Section 25-1.3. No shoreline lot shall be exempt from the special requirements for shoreline lots.
- (2) The director shall issue a special management area minor permit where the director finds that the development proposal:
  - (A) Has a valuation or fair market value not in excess of \$125,000.00; and
  - (B) Will not significantly affect the special management area and/or special wetland area.

The director shall grant, grant with conditions or deny an application for a minor permit within 45 days of receipt of a [complete] completed application."

SECTION 9. Section 25-5.2, Revised Ordinances of Honolulu 1990, as amended ("Acceptance"), is amended to read as follows:

**"Sec. 25-5.2 Acceptance.**

Upon compliance with the foregoing procedures, the director shall notify the applicant for a special management area use permit [by certified mail] in writing within 10 working days of receipt of an application that either: (1) the application has been accepted; or (2) the application will be accepted within 10 working days of completion of the assessment required by Section 25-3.3(c)(1), as determined by either the issuance of the finding of no significant impact or the acceptance of a final EIS. In the event that an application is incomplete, written notice from the director shall inform the applicant of the specific requirements necessary to complete the application. The application shall not be accepted unless it is complete. Upon acceptance of the application, the director shall





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also concurrently provide the council with [a] written notice including the date of acceptance of the application and a brief description of the proposal contained in the application.”

SECTION 10. Section 25-5.4, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

**“Sec. 25-5.4 Agency recommendation.**

The agency shall transmit its findings and recommendations on the application for a special management area use permit to the city council for its consideration and decision within [10] 20 working days of the close of the public hearing, unless the assessment required by Section 25-3.3(c)(1) has not been completed, in which case the deadline for transmitting the findings and recommendations to the city council shall be within 10 working days of either the issuance of the finding of no significant impact or the acceptance of a final EIS. This transmittal deadline may be extended if agreed to by the applicant.”

SECTION 11. Section 25-5.5, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

**“Sec. 25-5.5 Action by council.**

The council shall grant, grant with conditions, or deny any application for a special management area use permit within 60 calendar days after receipt of the agency’s findings and recommendations thereon. If the council does not act on the application as provided in this section within such 60-day period, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved prior to the requested effective date of the extension.”

SECTION 12. Chapter 25, Article 6, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new Section 25-6.3 to read as follows:

**“Sec. 25-6.3 Special requirements applicable to shoreline lots.**

The following requirements shall apply to all uses, structures, and improvements on any shoreline lot:

- (a) Exterior Lighting. All exterior lighting on a shoreline lot shall be shielded to reduce the possibility that seabirds and other marine life forms may become disoriented and harmed by the lighting. Shielded exterior lighting shall be



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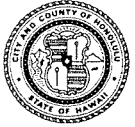
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implemented both during and after any construction work on a shoreline lot. Any wall-mounted exterior lighting on buildings on a shoreline lot shall be shielded by wall directors or other acceptable shielding, and all shielding shall be specified on building permit plans. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes on a shoreline lot shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and/or ocean waters, except as may otherwise be permitted by HRS Section 205A-71(b).

- (b) Landscaping. All landscaped areas, landscaping, and irrigation on or for any shoreline lot shall be contained and maintained within the property boundaries of the shoreline lot of origin, and shall under no circumstances extend:
- (1) Seaward of the shoreline as depicted on the current shoreline survey for the shoreline lot; or, in the event there is no current shoreline survey for the lot, seaward of the presumed shoreline; and
  - (2) Into any adjoining beach access right-of-way, public or private."

SECTION 13. Ordinance material to be repealed is bracketed and new material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the brackets, the bracketed material, or the underscoring.



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SECTION 14. This ordinance shall take effect upon its approval

INTRODUCED BY:

Todd Apo (BR)

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DATE OF INTRODUCTION:

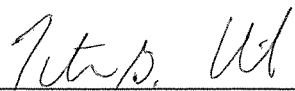
September 14, 2010  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

  
Deputy Corporation Counsel

APPROVED this 22<sup>nd</sup> day of December, 2010.

  
PETER B. CARLISLE, Mayor  
City and County of Honolulu

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
C E R T I F I C A T E

ORDINANCE **10-32**

**BILL 53 (2010), CD2**

Introduced: 09/14/10 By: TODD APO (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 23 AND 25, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, RELATING TO SHORELINE SETBACKS AND THE SPECIAL MANAGEMENT AREA.

Links: [BILL 53 \(2010\)](#)  
[BILL 53 \(2010\), CD1](#)  
[BILL 53 \(2010\), CD2](#)  
[CR-344](#)  
[CR-377](#)

COUNCIL	09/22/10	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING.				
	ANDERSON Y	APO Y	CACHOLA Y	DELA CRUZ Y	DONOHUE Y	
	GARCIA Y	KOBAYASHI Y	OKINO Y	TAM Y		
		NOTE: EFFECTIVE NOVEMBER 2, 2010, COUNCILMEMBER DONOVAN DELA CRUZ, REPRESENTING COUNCIL DISTRICT II, RESIGNED FROM OFFICE. (Refer to Communication <a href="#">CC-192</a> )				
		ON NOVEMBER 8, 2010, THE APPOINTMENT OF REED MATSUURA WAS APPROVED (Refer to <a href="#">RES10-313</a> ) AND HE WAS SWORN INTO OFFICE AS A MEMBER OF THE HONOLULU CITY COUNCIL REPRESENTING DISTRICT II TO FILL THE REMAINING TERM OF FORMER COUNCILMEMBER DONOVAN DELA CRUZ.				
		NOTE: EFFECTIVE NOVEMBER 8, 2010, COUNCILMEMBER TODD APO, REPRESENTING COUNCIL DISTRICT I, RESIGNED FROM OFFICE. (Refer to Communication <a href="#">CC-193</a> )				
ZONING	11/09/10	CR-344 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN <a href="#">CD1</a> FORM AND SCHEDULING OF A PUBLIC HEARING.				
PUBLISH	11/12/10	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
COUNCIL/PUBLIC HEARING	11/22/10	CR-344 ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING.				
	ANDERSON Y	CACHOLA Y	DONOHUE Y	GARCIA Y	KOBAYASHI Y	
	MATSUURA Y	OKINO Y	TAM Y			
PUBLISH	11/30/10	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.				
ZONING	11/30/10	CR-377 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING AS AMENDED IN <a href="#">CD2</a> FORM.				

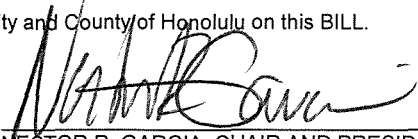
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COUNCIL	12/08/10	CR-377 ADOPTED AND BILL 53 (2010), CD2 PASSED THIRD READING AS AMENDED.							
ANDERSON	Y	CACHOLA	Y	DONOHUE	Y	GARCIA	Y	KOBAYASHI	Y
MATSUURA	Y	OKINO	Y	TAM	Y				

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

  
BERNICE K. N. MAU, CITY CLERK

  
NESTOR R. GARCIA, CHAIR AND PRESIDING OFFICER